

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Business Data Services in an Internet Protocol Environment)	WC Docket No. 16-143
)	
Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans)	WC Docket No. 15-247
)	
Special Access Rates for Price Cap Local Exchange Carriers)	WC Docket No. 05-25
)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services)	RM-10593
)	

**REPLY COMMENTS OF
THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE**

Susan M. Gately
SMGately Consulting, LLC
84 Littles Ave.
Pembroke, MA 02359
781-679-0150

Economic Consultant to
Ad Hoc Telecommunications Users
Committee

Colleen Boothby
Levine, Blaszak, Block & Boothby, LLP
2001 L Street, NW, Suite 900
Washington, DC 20036
202-857-2550

Counsel for
Ad Hoc Telecommunications Users
Committee

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Summary

Ad Hoc's reply comments address four issues raised by the record in this proceeding.

First, some parties continue to claim that cable companies compete with the ILECs in the provision of BDS. In multiple pleadings filed with the Commission in this docket and a variety of others, Ad Hoc members have consistently reported that cable companies are not offering comparable services and therefore do not exert competitive pressure on the ILECs for enterprise customer BDS. The ILECs and their supporters have too frequently relied on press releases and advertising materials, not actual data regarding cable sales to enterprise customers, to support their claims that they face cable competition in this market. But advertising hyperbole and puffery hardly equate to reality, as any enterprise customer of ILEC BDS can attest and as the data collection revealed when it exposed the low number of customer locations served by non-ILEC facilities.

In fact, Ad Hoc members report that cable companies are too often “no shows” when customers seek bids to provide service. Even in those cases where cable companies do respond to an RFP, they propose inflexible, non-negotiable, “take it or leave it” terms and conditions, akin to the form contracts they offer to mass market consumers. Most importantly, cable companies still refuse to negotiate enterprise-level SLAs, as if a bank's ATM services or a credit card validation network could accommodate service interruptions and outage intervals equivalent to a residential consumer's video service.

Second, the Commission sought comment in the FNPRM on proposals to establish a mandatory price differential between “wholesale” and “retail” BDS services. The Commission should not and cannot establish separate wholesale prices for carrier customers that are not available to end user customers. End users with the same volume and term requirements as carriers and the same capability for using BDS as inputs for their internal networks should have non-discriminatory access to those services at the same prices enjoyed by their carrier counterparts. The Commission already decided this issue long ago. In several prior decisions, the Commission concluded that Section 202 of the Act, which prohibits unjust and unreasonable discrimination, requires ILECs to make their access services available to carriers as well as non-carriers (such as enterprise customers, information service providers, systems integrators, private carriers, etc.) on the same terms.

Third, any replacement for the tariff filings which create the price caps “no suspension zone” must be feasible and create comparable incentives for ILECs to charge rates that comply with the rules. As a form of “incentive regulation,” the price caps rules were supposed to incent efficient, cost-cutting behavior to increase profits while keeping rates at just and reasonable levels. The rules create a “carrot” by permitting ILECs to earn higher profits than they could under traditional rate of return regulation but also a “stick” in the form of a tariff investigation and possible rate prescription by the FCC for carriers that try to tariff rates that are too high under the price caps rules.

The FNPRM proposed to abandon tariff filings in favor of an unspecified, customer-initiated rate challenge, in effect outsourcing the FCC’s enforcement

responsibilities to BDS customers. That approach is unfair because it would impose upon customers the burden of policing the ILECs but without the statutory tools and powers for doing so that are available only to the FCC. It is counterproductive because it provides nowhere near the same compliance incentive as the *in terrorem* effect of a formal FCC rate investigation. In addition, it presumes that customers would have information about the carrier's costs when the Commission has systematically eliminated all of the rules requiring ILECs to make cost information available. Under these conditions and for these purposes, the complaint process is nothing but a Potemkin village.

In order to preserve the compliance incentives created under the current system, the Commission's replacement process must (1) include refunds for past overcharges, not merely rate reductions on a going forward basis, (2) provide a detailed specification of cost and cost allocation data that carriers will be required to produce in order to justify above caps rates, (3) require BDS providers to justify in detail any inconsistency between those cost showings and the trends in costs and cost relationships established by previously-filed ARMIS data and any incremental cost showings in interconnection negotiations or state proceedings under Section 251, and (4) put any rate increase on hold pending resolution of a rate challenge.

Fourth, the Commission must impose immediate, temporary reductions in BDS providers' base line price levels so that the Commission can conduct a thorough analysis of the myriad issues raised by its proposals for a new regulatory regime, and begin the long overdue correction of the ILECs' excessive price levels.

The Commission should immediately implement a one-time temporary reduction in base-line prices of 25% and a temporary X-factor of 4.4% to remain in place pending adoption of a final, fully adjudicated X-factor. The attached declaration by Ad Hoc's economist Susan M. Gately details the data and analysis that justify these actions.

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**REPLY COMMENTS OF
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The Ad Hoc Telecommunications Users Committee (“Ad Hoc” or “the Committee”) files these comments in response to the Commission’s Further Notice of Proposed Rulemaking (“FNPRM”) ¹ in the dockets captioned above.

¹ *Business Data Services in an Internet Protocol Environment; Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593, Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 4723 (2016).

DISCUSSION

I. CABLE COMPANIES STILL DO NOT OFFER SERVICE TO ENTERPRISE CUSTOMERS THAT IS COMPARABLE TO THE ILECS' BDS

Several commenters have asserted, yet again, that cable companies offer services comparable to ILEC BDS and provide competition sufficient to constrain the ILECs' BDS market power.² This characterization of the market has been refuted repeatedly in the course of this proceeding. In multiple pleadings filed with the Commission in this docket and a variety of others, Ad Hoc members have consistently reported that cable companies seldom offer comparable services and therefore do not exert competitive pressure on the ILECs for enterprise customer services.

The ILECs and their supporters have too frequently supported their claims about robust cable competition with cable industry press releases and advertising materials, not actual data regarding cable sales to enterprise customers. But advertising hyperbole and puffery hardly equate to reality, as any enterprise customer of ILEC BDS can attest and as the data collection revealed when it exposed the low number of customer locations served by non-ILEC facilities.

In addition, Ad Hoc members report that conditions have not changed significantly in today's BDS marketplace with respect to cable entry. Many Ad Hoc members seek out service from cable providers because they are keenly aware of the positive difference competition makes when they go to market. But members report that cable companies are still too often "no shows" when customers seek bids to provide

² See, e.g., Comments of AT&T on the FNPRM (filed June 28, 2016) ("AT&T Comments") at 13-17; Comments of CenturyLink, Inc., Consolidated Communications, FairPoint Communications, Inc., and Frontier Communications Corp. on the FNPRM (filed June 28, 2016) ("Mid-Size ILECs' Comments") at 38-44.

service. Cable companies still fail to offer service that is comparable to ILEC BDS and still refuse to offer terms, conditions, and prices that meet enterprise customer needs, regardless of the BDS facility deployments cable companies have promised or may actually have made. Members report, for example, that cable companies often fail to respond at all when enterprise customers issue RFPs. Even in those cases where cable companies do respond to an RFP, they propose inflexible, non-negotiable, “take it or leave it” terms and conditions, akin to the form contracts they offer to mass market consumers.

Most importantly, cable companies still refuse to negotiate enterprise-level service level agreements (“SLAs”), as if a bank’s ATM services or a credit card validation network could accommodate service interruptions and outage intervals that are equivalent to a residential consumer’s video service. In addition, cable companies refuse to agree to terms and conditions with any real teeth, meaning penalties for service outages or other contract breaches that are substantial enough to incent good performance. As a result, even the weak SLAs cable companies may eventually agree to are *de facto* unenforceable since the contract penalties for non-performance are trivial. For these reasons, enterprise customers that use cable service tend to use it only as an occasional back-up for the ILEC services that are the primary building blocks of their networks.

II. MANDATORY “WHOLESALE” DISCOUNTS MUST COMPLY WITH SECTION 202’S PROHIBITION AGAINST UNREASONABLE DISCRIMINATION

At paragraphs 441-446 of the FNPRM, the Commission sought comment on proposals to establish a mandatory price differential between “wholesale” and “retail” BDS services. Several parties filed comments urging the Commission to establish specific discount requirements for wholesale service prices.³

The FNPRM and the comments are not always specific regarding the services that would be subject to the proposed discount relationship between “retail” and “wholesale” services – it is not even clear that the parties and the Commission have the same “wholesale” services in mind.⁴ If by “wholesale service” parties are referring to unbundled network elements or to the special wholesale pricing required by Sec. 252 of the statute, both of which are available only to carriers, then Congress may have closed the door to end users obtaining those services at those discounted rates absent the Commission’s exercise of its forbearance authority. But if “wholesale” is a reference to BDS generally, because those services are so often used as wholesale inputs for carriers’ wireless and wireline offerings to end users, then the Commission should not and cannot establish separate wholesale prices for carrier customers that are not available to end user customers.

End users with the same volume and term requirements as carriers and the same capability for using BDS as inputs for their internal networks should have non-

³ See, e.g., Comments of Windstream Services, LLC on the FNPRM (filed June 28, 2016) (“Windstream Comments”) at 39-44; Letter from Kathleen Grillo, Senior Vice President, Public Policy and Government Affairs, Verizon, and Chip Pickering, Chief Executive Officer, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25 and RM-10593 (filed Apr. 7, 2016).

⁴ Cf., e.g., the FNPRM reference to UNEs at 4747-8, para. 56 and Windstream’s reference to wholesale services in note 122 of its comments.

discriminatory access to those services at the same prices enjoyed by their carrier counterparts. Denying favorable discount pricing to non-carriers (such as enterprise customers, information service providers, systems integrators, private carriers, etc.) that are similarly situated to facility-based and resale carriers would violate Section 202 of the Act which prohibits unjust or unreasonable discrimination.

The Commission already decided this very issue long ago, when Pacific Bell refused to provide carrier-grade access service to First Data Resources, an enterprise customer. Citing Section 202, the Commission stated that "interstate access services should be made available on a non-discriminatory basis and, as far as possible, without distinction between end user and IC [interexchange carrier] customers."⁵ The Commission has also stated that, "[i]n general, we seek to eliminate so far as possible differences in services and rates based on whether the customer is a carrier or end user For example, end users should be able to obtain access services offered to ICs [interexchange carriers] if they wish, in addition to services expressly reserved for end users."⁶

Preserving the ability of non-carriers to purchase BDS at the same price as similarly situated carriers will benefit competition and the public interest in at least two ways. First, including the demand of non-carriers in the BDS discount service base increases scale economies, enabling ILECs to charge even lower rates to carriers and non-carriers alike. Second, marketplace competition is enhanced, even when non-

⁵ *First Data Resources, Inc.*, Memorandum Opinion and Order, 1986 FCC LEXIS 3347 (1986) at 15, para. 13.

⁶ *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 97 FCC 2d 1082, 1187 (1984).

carriers don't take advantage of their ability to buy BDS directly from an ILEC, because the availability of such an option constrains the ability of the ILECs' carrier customers to overcharge their end user customers for those inputs. For example, an interexchange carrier (e.g., a provider of nation-wide MPLS service) is discouraged from over-charging end users for the BDS components (i.e., the "access links" that connect end user locations to an MPLS port) of the interexchange network services purchased by them.

Consistent with long-standing precedent and sound public policy, the Commission should therefore affirm that non-carrier BDS customers are entitled to any BDS discounts not foreclosed to them by statute.

III. ANY REPLACEMENT FOR THE PRICE CAPS "NO SUSPENSION ZONE" MUST BE FEASIBLE AND CREATE COMPARABLE INCENTIVES FOR COMPLIANCE

The Commission's "price caps" rules were adopted in response to criticism of traditional "rate of return" regulation. By compensating carriers on a "cost plus" basis, rate of return regulation was faulted for creating irresistible incentives for carriers to expand their revenue requirement with inefficient expenditures since that was the base against which their profits were calculated. As a form of "incentive regulation," the price caps rules were supposed to incent ILECs to operate more efficiently and drive down their costs (as the only available means of increasing their profits) while keeping rates at levels that comply with the Commission's rules and statutory standards. But the price caps incentive structure included both a carrot and a stick: the "carrot" of higher returns was accompanied by the "stick" of a protracted and exhaustive process for investigating and prescribing rate levels should ILECs make a tariff filing that attempts to increase rates beyond the price caps limits. Ad Hoc still believes, in accordance with its

Comments,⁷ that tariff filings are required to make the price caps rules effective. The threat of action by the FCC, using the full range of statutory tools and resources available to it as the regulating agency, is necessary to provide effective incentives for carriers to stay in compliance with the price caps rules.

The FNPRM proposal to abandon tariff filings in favor of an unspecified, customer-initiated rate challenge of some sort shifts the enforcement burden from the FCC to BDS customers. In effect, the Commission would outsource its investigative and enforcement responsibilities to customers.

That approach is unfair and counterproductive. It is unfair because it would impose upon customers the burden of policing the ILECs but without the statutory tools and powers for doing so that are available only to the FCC. Compare, for example, the FCC's comprehensive authority to obtain cost and accounting data under Section 220(c) of the Act⁸ with the limited discovery available under the Commission's formal complaint procedures.⁹ It is counterproductive because it provides nowhere near the same compliance incentive as does the *in terrorem* effect of a formal FCC rate investigation.

⁷ Comments of the Ad Hoc Telecommunications Users Committee on the FNPRM (filed June 28, 2016) at 20-22.

⁸ "The Commission shall at all times have access to and the right of inspection and examination of all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept by such carriers, and the provisions of this section respecting the preservation and destruction of books, papers, and documents shall apply thereto. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry and the Commission may suspend a charge or credit pending submission of proof by such person. ... The Commission may obtain the services of any person licensed to provide public accounting services under the law of any State to assist with, or conduct, audits under this section."

⁹ 47 C.F.R. § 1.729.

The FNPRM's suggestion that the complaint process could provide an adequate substitute for the Commission's tariff review process is particularly ill-advised and illustrates the disadvantage to customers if that is their only procedural option.

Complaints are formal adjudications which result in an appealable finding that a rate is unjust and unreasonable under Section 201(b) of the Communications Act. 47 U.S.C. § 201(b). In order to make that finding, the Commission must determine whether rates are, on the one hand, so low as to be confiscatory and, on the other, so high as to be exploitative. As the Court of Appeals stated in *Farmers Union Central Exchange, Inc. v. FERC*, 734 F.2d 1486 (1984), at 1502:

[w]e begin from this basic principle, well established by decades of judicial review of agency determinations of "just and reasonable" rates: an agency may issue, and courts are without authority to invalidate, rate orders that fall within a "zone of reasonableness," where rates are neither "less than compensatory" nor "excessive." See, e.g., *FERC v. Pennzoil Producing Co.*, 439 U.S. at 517, 99 S.Ct. at 771; *Permian Basin Area Rate Cases*, 390 U.S. at 797, 88 S.Ct. at 1375.

"[T]he most useful and reliable starting point for rate regulation," according to the Court, is therefore an assessment of relevant costs, "[b]ecause the relevant costs, including the cost of capital, often offer the principal points of reference for whether the resulting rate is 'less than compensatory' or 'excessive.'" *Id.* Non-cost factors may enter in, but when the agency "chooses to refer to non-cost factors in ratesetting, it must specify the nature of the relevant non-cost factor and offer a reasoned explanation of how the factor justifies the resulting rates." *Id.*

Thus, the Commission cannot adjudicate whether a particular carrier rate schedule is just and reasonable without adequate information about the carrier's costs, which would not be available to a customer. Indeed, a customer or other interested party cannot even make a reasoned judgment whether to file a complaint in the first

place without such information. The U.S. Court of Appeals underscored the indispensable nature of cost data for this purpose in *Virgin Islands Telephone Corporation v. FCC*, 444 F.3d 666 (D.C. Cir. 2006). There, the court held that the statute of limitations for complaining that Vitelco's rates were excessive did not even begin to run until the filing of Vitelco's final "monitoring report," a Commission-mandated report of its costs and revenues:

We have specifically held that claims for damages against rate of return carriers accrue when the carrier files its final monitoring report. ... Because the Commission does not (and indeed cannot ...) evaluate whether a rate of return violation has occurred until the end of the relevant monitoring period, ... it is not possible for any other party to have knowledge of the violation before then.

444 F.3d at 670 (citations omitted). In other words, the Court pegged the running of the statute of limitations not to the expiration of the monitoring period (when the substantive violation could be said to have occurred) but to the subsequent filing of the monitoring report, when cost information became available to the Commission and interested parties that would allow them to determine whether a violation had occurred. As the Court recognized, neither the Commission nor any party would be able to evaluate whether the rates were just and reasonable without the underlying cost information.

But the Commission has made that very information unavailable. In a series of orders culminating in a 2013 forbearance decision,¹⁰ the Commission has systematically cut itself off from the very information it would need now to eliminate tariff filings as a price caps enforcement mechanism. It eliminated the cost assignment rules

¹⁰ *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, Memorandum Opinion and Order, 28 FCC Rcd 7627 (2013) at 7645-56, paras. 30-55, *pet. for review denied sub nom. Verizon v. FCC*, 770 F.3d 961 (D.C. Cir. 2014).

for allocating costs between state and federal jurisdictions, between regulated and non-regulated services, and among regulated services. This information is no longer collected by the Commission and is not available to the parties the Commission proposes to make responsible for challenging unjust and unreasonable rates. Under these conditions and for these purposes, the complaint process is nothing but a Potemkin village.

Sprint has suggested requirements for a replacement process to ensure that it produces compliance incentives as effective as the current tariff filing and tariff review process. But even it depends upon the availability of the very cost data the Commission has eliminated.¹¹ Sprint's proposal relies on a challenge process modeled on the one adopted by the Commission in the inmate calling services proceeding. But that process requires the Commission to examine a variety of provider costs, namely, "costs directly related to the provision of interstate ICS and ancillary services; demand levels and trends; a reasonable allocation of common costs; and general and administrative cost data."¹²

If the Commission is nevertheless determined to rely on a customer-initiated process for evaluating BDS rates, it will need to adopt specific measures to create a more robust process and to allocate procedural burdens more fairly if that process is to have the same impact and effective incentives for BDS providers to keep prices at reasonable levels. The sheer burden of pursuing a complaint will likely discourage the filing of one until rates reach truly egregious levels. In combination with the time

¹¹ Comments of Sprint Corporation on the NPRM ("Sprint Comments") at Sections III.A.4 and III.B.

¹² *Id.* at 64, *citing Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763 (2015), at 12870, para. 217.

required for resolution of a complaint, a customer-initiated procedure would enable BDS providers to keep excessive rates in place long enough to more than compensate them for the costs of defending against a challenge. The Commission should therefore include the following features in any customer-initiated rate review process:

- Refund liability – BDS providers must be required to refund past overcharges, not merely reduce rates on a going forward basis. As AT&T concedes in its comments, the “deemed lawful” protection carriers enjoy in a tariffed world has substantial value that does not exist without tariffs.
- Cost specifications – the Commission must provide a detailed specification of the data regarding historical costs and cost allocations that carriers will be required to produce. Such a specification will provide a clear road map for parties to the challenge process and clear notice to BDS providers that pricing above cap to the complaint-provoking level will not pay off.
- Continuity in cost allocations – BDS providers must be required to justify in detail any inconsistency between (1) their detailed cost showings in a customer-initiated challenge process and (2) the trends in costs and cost relationships established by the ARMIS data up to the time of the ARMIS forbearance order as well as any incremental cost showings in interconnection negotiations or state proceedings under Section 251.
- Price caps interim rates – pending resolution of a customer-initiated challenge to a rate increase, BDS providers must be permitted to charge only the lower rate in place before the increase.

IV. THE RECORD CONFIRMS THE NEED FOR IMMEDIATE INTERIM RATE REDUCTIONS

In its initial Comments in response to the FNPRM, Ad Hoc urged the Commission to implement immediate, temporary reductions in BDS providers' base line price levels so that (1) the Commission will have sufficient time to conduct a thorough analysis of the myriad issues raised by its proposals for a new regulatory regime for BDS and (2) the Commission can begin the long overdue correction of the ILECs' excessive price levels. The information and analysis submitted by other parties have confirmed the need for the Commission to implement Ad Hoc's proposal as soon as possible.

The Commission should immediately implement a one-time temporary reduction in baseline prices of 25% and a temporary X-factor of 4.4% to remain in place pending adoption of a final, fully adjudicated X-factor. While Ad Hoc recommended an immediate interim reduction in the baseline price levels during the initial Comment cycle, the Committee has now determined that the 25.2% reduction in baseline BDS price levels calculated by Drs. David Sappington and William Zarakas using the EU KLEMS data set and proposed by Sprint¹³ should be implemented immediately. At the same time, the FCC should adopt 4.4 as a temporary X-factor pending final resolution of the inevitable disputes that will arise regarding adoption of the permanent component.

The attached Declaration by Ad Hoc's economist Susan M. Gately details why the EU KLEMS database used to develop the 25.2% reduction and 4.4% X-factor is

¹³ Sprint Comments at 50-51. The 4.4 figure is the lowest of the X-factor calculations developed by Drs. Sappington and Zarakas and submitted by Sprint. As discussed above, it is based upon data taken directly from the EU KLEMS with no modifications. It is also the X-factor advocated by INCOMPAS and Verizon in their Joint Letter dated June 27, 2016 (Letter from Kathleen Grillo, Senior Vice President, Public Policy and Government Affairs, Verizon, and Chip Pickering, Chief Executive Officer, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25 and RM-10593 (filed June 27, 2016).

superior to the BLS KLEMS database originally put out for comment in the FNPRM.¹⁴ As Ms. Gately also reports, both AT&T and Sprint generally support development of an X-factor using the KLEMS data set described as Method One in the FNPRM. Using the more tightly focused EU KLEMS database identified by Drs. Sappington and Zarakas,¹⁵ coupled with what AT&T described as a “correction” in the development of the input price index results in the 4.4 X-factor. Using that same data and methodology, Sappington and Zarakas calculated the 25.2% reduction in baseline prices that Ad Hoc endorses here today.

In support of their arguments that the FCC should not reduce baseline prices or implement an X-factor, both the Mid-Size ILECs and AT&T dispute that there will be future productivity gains in provision of the BDS services that are the subject of this investigation.¹⁶ As Ms. Gately details in her declaration, however, both parties point to declining demand for TDM BDS services but neither party has presented any quantification of the impact of that decline on overall operating costs in support of these statements, nor have they acknowledged or accounted for the significant future reductions in the cost of providing service that will result from the continued provision of

¹⁴ See Gately Declaration at 5, para. 7.

¹⁵ The EU KLEMS data set includes only data from NAICS 517 – Telecommunications – and is therefore more narrowly targeted to Telecommunications than the BLS KLEMS data set initially suggested by the FCC (where only 82% of revenues are associated with Telecommunications). As Ms. Gately states in her declaration “100% accuracy in targeting the data set is clearly superior to 82% or 90% accuracy, and AT&T should have no reason for opposing use of the EU KLEMS data.” Gately Declaration at 5, para. 7.

¹⁶ AT&T Comments at 7; Comments of CenturyLink, Inc., Consolidated Communications, FairPoint Communications, Inc., and Frontier Communications Corp. on the FNPRM (filed June 28, 2016) (“Mid-Size ILECs’ Comments”) at 70.

BDS services (particularly TDM BDS services) over plant that has been significantly, if not entirely, depreciated.¹⁷

In a similar vein, AT&T claims that “an increased X-Factor (and a one-time adjustment to these rates) intended to drive down the rates for legacy TDM services would dramatically slow the IP transition by giving customers an artificial incentive to remain on these legacy networks, which in turn will reduce incentives to invest in new broadband networks.”¹⁸ The Gately Declaration points out that “those very customers have been being given improper price signals for at least the past decade, giving them an ‘artificial incentive’ to migrate away from perfectly functioning, perfectly functional TDM services.”¹⁹

Moreover, AT&T’s threat to discontinue investing in new broadband networks if it is not allowed to continue squeezing monopoly profits from TDM BDS purchasers must be recognized as just that – a threat. As Ms. Gately also details, it has taken government subsidies in the form of Connect America Funds (Phase I and II) to the tune of more than \$500-million per year to “incent” AT&T to deploy broadband to a portion of its unserved areas.²⁰ Allowing continued overpricing of TDM BDS services may increase AT&T’s cash flow, but it will not impact the overall business metrics in the decision-making process relative to broadband deployment.

¹⁷ Gately declaration at 7, para. 11 and n. 16. As Ms. Gately also details, these carriers have failed to account for any demand stimulation that can be expected to result from reductions in the baseline price levels.

¹⁸ AT&T Comments at 7.

¹⁹ Gately Declaration at 14, para. 23.

²⁰ See Gately Declaration at 14, para. 24.

The Commission should emphatically reject AT&T's suggestion that it be allowed to purposefully engage in prohibited implicit subsidization of broadband services with revenues produced by price-gouging TDM BDS subscribers. Those subscribers are already contributing heavily to AT&T's broadband deployment through the explicit 17.9% USF surcharge assessed on their monthly bills.²¹

Similarly, the Declaration of Mid-Size ILECs' Craig Davis (Vice President for Sales and Account Management in CenturyLink's Wholesale Markets Group)²² is fundamentally a complaint that CenturyLink will be unable to continue charging unregulated, monopoly-level prices for a segment of their BDS demand because competitors have entered that segment of the market (i.e., Ethernet at speeds of at least 100 Mbps and above connecting to wireless towers). The competitive conditions he describes are not relevant to nor reflective of the conditions extant for BDS provided at speeds of 100 Mbps or below – be they TDM or Ethernet, or services sold at non-tower locations.

If CenturyLink and other members of the Mid-Size ILECs are unable to offer fiber connections to mobile towers at speeds of 100 Mbps and above at the same price levels as their (typically smaller) competitors – whether because Mid-Size ILECs are less efficient in provisioning those services or because they choose to provide shareholders with higher returns than that line of business can support – then the solution is to exit that segment of the market. Instead, as detailed in Ms. Gately's

²¹ See Gately Declaration at 15, para. 25. More than 5% of the total USF funding disbursements for 2016 will go to AT&T specifically for the purpose of “incenting” it to deploy broadband to unserved areas through its CAF Phase 1 and Phase 2 receipts (\$500-m ÷ approx. \$9-b). AT&T's \$500-million draw uses more than 10% of the overall High Cost portion of USF (\$500-m ÷ \$4.5-b).

²² Mid-Size ILECs' Comments, Attachment A.

Declaration, the vast majority of CenturyLink's capital investments (via Qwest Corporation) over the last four years have been directed almost entirely at this very market.²³ The Declaration clarifies that CenturyLink's problem is not so much that the costs of providing the services are too high but that the prices for the services have been set too far in excess of those costs, something that a competitive market does not allow a provider to maintain over the long term.

Indeed, Mr. Davis' Declaration details repeated price reductions that CenturyLink has had to make to adjust to a competitive marketplace. His declaration and recitations of necessary price reductions since 2012²⁴ offers *prima facie* evidence that CenturyLink's 'pre-competition' prices were set far in excess of the levels that would be produced in a competitive marketplace. It bears emphasizing that, although CenturyLink reports being forced to repeatedly lower its prices for existing customers of existing services, CenturyLink makes no claim that prices have been lowered to a level that makes the services unprofitable to provide.

Davis's Declaration provides ample evidence of the need for a price adjustment for all BDS services and locations where competition is not available, in order to force prices down in precisely the manner described by Mr. Davis. In fact, a plain reading of the Mid-Size ILECs' comments and Mr. Davis' Declaration reveals that excessive prices for TDM services may be driving much of the demand shift toward higher bandwidth facilities.²⁵ Were TDM BDS prices lower, the incentive to shift demand to higher

²³ See Gately Declaration at n. 22.

²⁴ Davis Declaration at 2, para. 6 and 5, para 16.

²⁵ Per Mid-Size ILECs "Most of the customers who disconnect DSn services are migrating to Ethernet or other packet-based services, which provide higher throughput and **better per-megabyte pricing than comparable DS1 or DS3 services...**" (emphasis added). Mid-Size ILECs' Comments at 18.

bandwidth Ethernet Services would be reduced. Moreover, if the prices for TDM BDS and low-speed Ethernet are reduced in keeping with Ad Hoc's recommendation, BDS providers could expect stimulation of demand for those services.²⁶

Finally, the Declaration of Mr. Davis and the accompanying Declaration of CenturyLink's Director of Product Management in the Wholesale Market Group, David Williams,²⁷ both focus almost exclusively on BDS services sold to wireless carriers, as if purchases by wireless carriers represent the vast majority of BDS purchases. That is not the case, of course. Services sold to wireless carriers represent only a portion of the market. The data filed with the Commission in response to the data request reveal that wireless carrier purchases represented far less than half of all BDS purchases – and an even smaller share of all TDM BDS purchases.²⁸

²⁶ There is certainly no evidence in the record that this market is not subject to the normal laws of supply and demand.

²⁷ Mid-Size ILECs' Comments, Attachment B.

²⁸ Gately Declaration at 17, para 30 and n. 39.

CONCLUSION

Enterprise customers like the members of Ad Hoc have been advocating for reform of the Commission's rules for special access since 2002. For the reasons described in detail above and in the pleadings it has filed previously in this proceeding, Ad Hoc urges the Commission to adopt the reforms described therein.

Respectfully submitted,

AD HOC TELECOMMUNICATIONS USERS COMMITTEE

By: Colleen Boothby

Susan M. Gately
SMGately Consulting, LLC
84 Littles Ave.
Pembroke, MA 02359
781-679-0150

Economic Consultant to
Ad Hoc Telecommunications Users
Committee

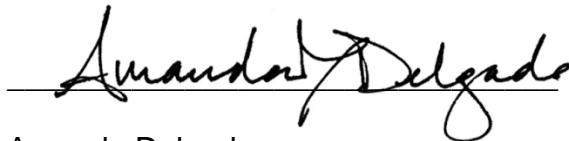
Colleen Boothby
Levine, Blaszak, Block & Boothby, LLP
2001 L Street, NW, Suite 900
Washington, DC 20036
202-857-2550

Counsel for
Ad Hoc Telecommunications Users
Committee

Filed: August 9, 2016

Certificate of Service

I, Amanda Delgado, hereby certify that a version of the preceding Comments of the Ad Hoc Telecommunications Users Committee redacted for public inspection were filed this 9th day of August, 2016 via the FCC's ECFS system.

A handwritten signature in black ink, reading "Amanda Delgado", is written over a horizontal line.

Amanda Delgado
Legal Assistant
Levine, Blaszak, Block & Boothby, LLP
2001 L Street, NW
Suite 900
Washington, DC 20036

DECLARATION OF SUSAN M. GATELY

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Special Access for Price Cap Local)	WC Docket No. 05-25
Exchange Carriers)	
)	
AT&T Corporation Petition for)	RM-10593
Rulemaking to Reform Regulation of)	
Incumbent Local Exchange Carrier)	
Rates for Interstate Special Access)	
Services)	
)	
Business Data Services in an Internet)	WC Docket No. 16-143
Protocol Environment)	
)	
Investigation of Certain Price Cap)	WC Docket No. 15-247
Local Exchange Carrier Business Data)	
Services Tariff Pricing Plans)	

Reply Declaration of

Susan M. Gately

On Behalf Of
Ad Hoc Telecommunications Users Committee

August 9, 2016



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20			

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Local Exchange Carrier Business Data)	
Services Tariff Pricing Plans)	

REPLY DECLARATION OF SUSAN M. GATELY

1

2 Susan M. Gately, of lawful age, declares and says as follows:

3 1. My name is Susan M. Gately; I am President of SMGately Consulting, LLC (SMGC),

4 84 Littles Avenue, Pembroke, MA 02359. SMGC is a consulting firm specializing in

5 telecommunications, economics, and public policy. I have participated in numerous proceedings

6 before the Federal Communications Commission (“FCC” or “Commission”) dating back to 1981

7 and have appeared as an expert witness in state proceedings before state public utility

commissions. My Statement of Qualifications is annexed hereto as Attachment 1 and is made a part hereof.

I. Introduction

2. I was asked by the members of the Ad Hoc Telecommunications Users Committee to review and analyze comments, expert reports and declarations filed in the initial comment cycle in response to the FCC's Business Data Services *Further Notice of Proposed Rulemaking*.¹

Following that review, I was asked to respond to comments on two separate but related issues:

- a. Comments and proposals that relate to the FCC's proposed one-time adjustment to baseline price cap levels and development of a going forward X-factor.²
- b. Claims by various ILECs that there should be no expectation of going-forward productivity in the provision of BDS and that a reduction in baseline prices or adoption of an X that is not set equal to GDP-PI will provide "artificial incentives" for the continued purchase of TDM BDS.

A to my Declaration includes the Tables discussed in the text below. Throughout the remainder of my Declaration, citations for numbers discussed as coming from Tables in Appendix A are found in those tables.

¹ *Business Data Services in an Internet Protocol Environment; Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593, Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 4723 (2016) ("FNPRM").

² FNPRM at 4866, para. 364.

II. Sprint’s proposal to use the EU KLEMS data set in place of the KLEMS data set identified in the FCC’s proposed Method One (for development of a productivity factor) offers a useful refinement of the data set and solves the issues identified by AT&T relative to the development of the input price index

3. Few parties provided specific input relative to the questions posed in the NPRM as to the most appropriate data set to use in developing a productivity factor for use as an X-factor in the price caps plan and for calculation of a baseline adjustment to the current price caps levels, but two commenters, AT&T and Sprint, did support use of a data set and calculations close what is described as Method One in the NPRM.³ Both AT&T and Sprint support development of a productivity factor using KLEMS data collected by the BEA / BLS. Both suggest slight adjustments to Method One. Each develops a substantially different “X” based upon that modification.

4. AT&T supports use of the BLS KLEMS data set identified in the FNPRM, acknowledging that the data set includes data for more than the telecom industry but expressing the opinion that the inclusion of broadcasting service inputs in the development of the productivity factor “does not present a significant problem.”⁴ AT&T takes issue with the indexing method used by the FCC to create the input price index component of the overall productivity factor and implements what it describes as a “minor correction” to the Commission’s BLS KLEMS-derived calculations, claiming the Commission’s method “is not conventional and is not consistent with the indexing methods used by the BLS.”⁵ Notably, while

³ FNPRM at 4877, para. 406.

⁴ Comments of AT&T on the FNPRM, WC Docket 05-25 et al. (filed June 28, 2016) (“AT&T Comments”) at 58.

⁵ AT&T at 57, n. 164.

1 the two economists hired by AT&T to develop its productivity factor, Drs. Mark Meitzen and
2 Philip Schoech, expressed concerns that the input price index developed by the FCC uses an
3 indexing method that is not “conventional” and “lacks economic acceptance”⁶ at no point do they
4 state that the indexing method is not valid, nor that the results are not viable. Drs. Meitzen and
5 Schoech replace the FCC-developed input price index with one they describe as “consistent with
6 BLS methods” resulting in an overall X-factor of 1.95 based upon the period 2005 to 2013.⁷

7 5. Sprint proposes use of what is known as the EU KLEMS data set, a refined version of
8 the BLS KLEMS data set that is based upon the very same US BLS/BEA data as the BLS
9 KLEMS data set, with the exception that it excludes the broadcasting segment of that data set
10 that is not relevant to the investigation here.⁸ The economists working for Sprint, Drs. David
11 Sappington and William Zarakas, develop an X-factor utilizing the EU KLEMS data set of 4.4
12 based upon the period 1998 to 2010.⁹

⁶ Mark E. Meitzen and Philip E. Schoech, *Assessment of the FCC’s Proposed Options for the Special Access Price Cap X-Factor, Business Data Services in an Internet Protocol Environment; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket Nos. 16-143, 05-25, RM-10593 (filed Jun. 28, 2016) (“Meitzen and Schoech Report”) at 15 – 16.

⁷ Meitzen and Schoech Report at 8, Table 1.

⁸ Comments of Sprint on the FNPRM, WC Docket 05-25 et al. (filed June 28, 2016) (“Sprint Comments”) at 48-9. The EU KLEMS data are described as “best suited to the task at hand because they remove the broadcasting component of the BEA/BLS data without commingling the resulting data with data from other industries.” Sprint Comments at 49 (citing U.S. CENSUS BUREAU, 2012 NAICS: 517 – Telecommunications, Industry Statistics Portal, <https://www.census.gov/econ/isp/sampler.php?naicscode=517&naicslevel=3> (last visited June 19, 2016)).

⁹ Declaration of David E. M. Sappington and William P. Zarakas, Exhibit E to Sprint Comments (“Sappington and Zarakas Declaration”), generally and at 18, para 35.

1 6. The input price index used in the development of the Sprint 4.4 X-factor and
2 corresponding proposed 25.2% reduction in baseline prices is taken directly from the EU
3 KLEMS data set and is in fact an integral component thereof.¹⁰ Using the EU KLEMS input
4 price index resolves the issues surrounding the FCC’s “unconventional” approach substituting in
5 its place a telecom-only version of the very index recommended by AT&T.

6 7. Use of the EU KLEMS telecommunications-specific data set in place of the BLS
7 KLEMS data set that includes both telecommunications and broadcasting data is an easy choice.
8 It makes no sense to use the BLS KLEMS data set for the combined NAICS categories of 515
9 (Broadcasting) and 517 (Telecommunications), with the broadcasting revenues comprising
10 almost 20% of the combined category, when the EU KLEMS data set, developed from the
11 identical BLS / BEA data for NAICS category 517 (Telecommunications) alone is available.
12 100% accuracy in targeting the data set is clearly superior to 82% or 90% accuracy,¹¹ and AT&T
13 should have no reason for opposing use of the EU KLEMS data.

14 8. Additionally, the “minor corrections” to the FCC’s method 1 Input Price Index
15 proposed by Drs. Meitzen and Schoech are not relevant to nor necessary for use with EU
16 KLEMS-based X-factor put forth by Sprint, as it uses the US telecommunications-specific input
17 price index developed and presented as part of the EU KLEMS data set – with no

¹⁰ EU KLEMS Growth and Productivity Accounts: Data in the ISIC Rev. 4 industry classification, www.euklems.net, ISIC Rev 4, USA Basic 2012, USA_output_12i.xls, Sheet “Data”, Variable II_P, description “Telecommunications”, Code “61”, line 357.

¹¹ Meitzen and Schoech represent that 82% of revenues and 90% of capital assets included in the combined NAICS 515 and 517 data used in the BLS KLEMS data set are associated with Telecommunications. Meitzen and Schoech Report at 5.

1 modifications.¹² Therefore Drs. Meitzen and Schoech's expressed concerns with the use of an
2 indexing method that is not "conventional" and "lacks economic acceptance" are not relevant
3 here.

4 9. It should be noted that the input price index calculations performed by the FCC and set
5 forth in the FNPRM as part of Method One may well be justifiable and preferable in the long run
6 to the Input Price Index found in either EU or BLS KLEMS.¹³ That being said, the Input Price
7 Index from the EU KLEMS data set should be used in conjunction with the rest of the EU
8 KLEMS data for the purpose of developing a non-controversial X-factor and baseline adjustment
9 to prices for use in implementing the immediate relief sought in the initial comments of the end
10 users participating in this proceeding, Ad Hoc and NASUCA.

11 **III. The Mid-Size ILECs are wrong that there is little reason to believe that the real**
12 **costs of providing BDS are falling.**

13 10. The Mid-Size ILECs'¹⁴ comments on the implementation of a going forward
14 productivity-based X-factor and the implementation of a corrective price adjustment for Business
15 Data Services add nothing useful to the record (aside from speculation and innuendo). The Mid-
16 Size ILECs claim, "There is, in fact, little reason to believe that the real (i.e., inflation-adjusted)
17 costs of providing BDS are falling over time, because the principal inputs to these offerings are

¹² See n. 11 *supra*.

¹³ The same is true of the input price indices derived from the CACM and presented as Methods Two and Three in the FNPRM.

¹⁴ CenturyLink, Inc., Consolidated Communications, FairPoint Communications, Inc., and Frontier Communications Corp., collectively.

1 not themselves subject to aggressive productivity gains.”¹⁵ They follow this assertion with an
2 illustrative example that they purport demonstrates the impact that declining demand for TDM
3 BDS services has had upon “unit costs.”

4 11. The Mid-Size ILECs offer no *actual* quantification of the impact that the declining
5 demand they describe has had on the cost of providing these services and whether it has, or will
6 have, any impact on future productivity.¹⁶ It strains credulity to believe that these carriers (who
7 are multi-billion dollar players despite their chosen moniker) do not have at hand information on
8 the cost of provisioning services into a market the exceeds \$20-billion in annual sales and into
9 which they each sell hundreds of millions, if not billions, of dollars of service each year. Is one
10 really to believe that carriers of the size of CenturyLink and Frontier don’t know the underlying
11 unit costs of these services? And if they do not – how can they defend the price levels in place
12 today? The carriers themselves are the only ones with data in hand to refute the productivity
13 studies – yet they have failed to bring any of that data to the table to support their “belief[s]” and
14 instead populate their comments with a fanciful example of costs expressed in “Gold
15 Doubloons.”¹⁷

16 12. Contrary to the claims of the Mid-Size ILECs there is every reason to “believe” that
17 productivity has been increasing and will continue to do so – and there is data (in addition to the

¹⁵ Comments of CenturyLink, Inc., Consolidated Communications, FairPoint Communications, Inc., and Frontier Communications Corp. on the FNPRM, WC Docket 05-25 et al. (filed June 28, 2016) (“Mid-Size ILECs’ Comments”) at 70.

¹⁶ Also lacking from the Mid-Size ILECs’ Comments is any analysis of the demand stimulation that is likely to occur from a substantial decrease in prices – stimulation that may well offset, or even exceed the on-going decline they describe.

¹⁷ Mid-Size ILECs’ Comments at 74-75.

1 productivity study results and the data that they (the Mid-Size ILECs) undoubtedly have in hand
2 but have chosen not to share) to back up that belief.

3 13. The Mid-Size ILECs correctly point out that fixed costs are “high” relative to
4 marginal costs for TDM BDS services.¹⁸ Missing from their discussion is the fact that those high
5 “fixed” costs are primarily recovered through expenses associated with the depreciation of the
6 “fixed” capital assets over which the services are provided.¹⁹ Large portions of the ILEC
7 networks (particularly the copper networks over which TDM BDS services are provided) are
8 already fully depreciated meaning that the “fixed” costs in some (perhaps many) cases has
9 dropped to \$0.

10 14. Table 1 attached contains an analysis of the depreciation expense of one of the Mid-
11 Size ILECs, Qwest Corporation (the former Qwest ILEC affiliates now operated by
12 CenturyLink), reported to the SEC in its 10-K filings for the years ending 2010 – 2015. Qwest
13 Corporation (hereinafter “Qwest”) was chosen because its operations have always been almost
14 entirely ILEC in nature (many other facets of Qwest’s business having been performed by its
15 pre-acquisition-by-CenturyLink parent QCII) and although it was acquired by CenturyLink in
16 2011, it has had no acquisitions or spin-offs since that time complicating the data. Looking at
17 Qwest’s data reveals that much of Qwest’s plant has already been depreciated – so much so that

¹⁸ Mid-Size ILECs’ Comments at 73. In fact, the same is true with packet-base BDS. As such an increase in capacity demand over an already in-place facility has the opposite effect described by the Mid-Size ILECs.

¹⁹ Productivity is a measure of the quantity of output associated with a given quantity of inputs. Capital inputs are translated into operating expenses (the “fixed costs” identified by the Mid-Size ILECs) through the process of depreciation. If no new capital inputs are required to provision a service that absolute cost of new capital is irrelevant to future productivity.

1 the overall level of depreciation expense is now dropping despite not insignificant capital
2 investments over that six- year period. A whopping 40% reduction occurred in Qwest's booked
3 annual depreciation expenses between 2010 (when the expense was \$1.65-billion) and 2015
4 (when the expense had dropped to \$986-million).²⁰ As a percentage of the relatively constant
5 total annual operating expense of approximately \$6.7-billion depreciation expense dropped from
6 24% in 2010 to 15% in 2015.

7 15. The Mid-Size ILECs provide an illustrative example purporting to demonstrate the
8 impact of declining demand for DSn facilities.²¹ Mid-Size ILECs' example is misleading
9 because what they describe as the "fixed" costs of providing the service, which in reality are
10 expressed as depreciation expenses, do not really remain "fixed" into perpetuity – particularly if
11 the ILEC is not re-investing in new plant to provision the service. The explanatory text in
12 Qwest's 10-Ks makes clear that they are not re-investing in plant to provide TDM services at
13 most business locations like those used in the Mid-Size ILECs' example.²² Going back to the

²⁰ It should be noted that the decreases in depreciation expense are understated as they related to the facilities used to provision TDM BDS. Depreciation expense associated with newly deployed plant to provision residence broadband and high-bandwidth PBDS (including investments made with Connect America Funds) is added in each year. If it were possible to analyze only the depreciation expense associated with facilities in place at the start of the period (2010) the decline in depreciation expense would be even more substantial.

²¹ Mid-Size ILECs' Comments at 74-75.

²² Qwest's 10-K for the year ended December 2011 reported that most capital expenditures for 2011 were focused on broadband and deploying fiber to the tower ("FTTT") and that there would be no change in direction for 2012 (Qwest Corp., Annual Report (Form 10-K) (Mar. 2, 2012) at 32 and 45). Four years later, for the year ended December 2015, Qwest reported, "Our capital expenditures continue to be focused on our strategic services such as broadband and the deployment of "fiber to the tower", which is a type of telecommunications network consisting of fiber-optic cables that run from a wireless carrier's mobile telephone switching office to cellular towers to enable the delivery of higher bandwidth services supporting mobile technologies than would otherwise generally be available through a more traditional copper-

Qwest Corp data illustrated in Table 1 attached, at year end 2011 (following acquisition by CenturyLink and re-valuation of all Qwest Plant from book to fair market value) Qwest reported \$8.4-billion in Gross Property, Plant and Equipment (PPE) and Net PPE of \$7.5-billion (net of accumulated depreciation). Qwest reported new capital investments (capex) in PPE for the years 2012, 2013, 2014 and 2015 totaling \$4.9-billion, and Gross PPE increased by \$3.8 billion to \$12.2-billion by year end 2015.²³ Throughout this period, when Qwest incurred capital expenditures in PPE equal to almost 60% of its total Gross PPE at the start, its Net PPE remained relatively constant at \$7.3-billion (a slight decline).

16. Even more telling, Qwest recorded depreciation expenses of \$4.3-billion in that same period, 2012 – 2015, an amount equal to 57% of the Net (not yet depreciated or retired) PPE (plant in service) at the end of 2011. Combining the \$4.3-billion in depreciation expense and the \$1.1-billion in retirements of some kind (detailed in footnote 23 supra), and performing the same calculation it becomes clear that approximately \$5.4-billion (more than 70%) of a net plant base of \$7.5-billion had been depreciated or retired in the four years between the end of 2011 and the end of 2015.²⁴

based telecommunications network” (Qwest Corp., Annual Report (Form 10-K) (Mar. 1, 2016) (“Qwest’s 2015 10-K”) at 35).

²³ The difference between the Capital Expenditures for period and the increase in Gross PPE for the same period generally represents plant retirements – in this case those retirements would have equaled about \$1.1-billion. As described in Qwest’s 2015 10-K at 61, “Assets shared among many customers may lose service value as those customers leave the network. However, the asset is not retired until all customers no longer utilize the asset and we determine there is no alternative use for the asset.”

²⁴ As much as \$620-million of the \$5.4-billion in plant depreciation / retirement between 2012 and 2015 is likely associated with the additional \$4.9-billion in primarily fiber-based capex detailed above. This amount is derived by using a straight-line depreciation of the new primarily fiber-based plant with an assumed 20-year life. Expected fiber life taken from

1 17. Recasting the Mid-Size ILECs' illustrative example of the impact of declining
2 demand for DSn facilities²⁵ demonstrates the import of depreciation expenses to the arguments
3 being made by the ILECs. The paragraph below is a redline version of Mid-Size ILECs'
4 description with an assumption that the plant over which the DS3 in the example given has been
5 fully depreciated during the 2005 to 2015 period.

6 Assume, for example, that an ILEC in 2005 served a commercial building over a single
7 DS3 loop, which it used to provide two DS1-capacity circuits to each of ten tenants. At
8 that point, the ILEC could recover its annual revenue requirement by dividing that
9 requirement by ten. If, a decade later, the ILEC still served the same building using the
10 same DS3, but now served only five tenants (because others have shifted to service from
11 cable, fixed wireless, or another facilities-based provider), the ILEC now must cover its
12 revenue requirement by amortizing that requirement by just five. During that same period
13 assume that the plant ("fixed costs") over which the DS3 is provisioned became fully
14 depreciated. Moreover, because fixed costs are so high relative to marginal costs, the
15 total cost to serve the five tenants is no ~~less (or almost no less)~~ different than the cost to
16 serve all ten would have been – which had been almost nothing since the time the plant
17 had become fully depreciated. Put differently, between 2005 and 2015, if inflation-
18 adjusted costs had remained the same, the ILEC's per-unit costs would have ~~doubled~~
19 declined by 100%. Even if its overall productivity gains for all network services had
20 resulted in its total real costs for all services falling by half, the provider would ~~only have~~
21 ~~broken even~~ winding up with ~~the same~~ a per-unit real cost at this building in 2015 of
22 almost \$0 as in 2005. And if efficiencies had resulted in a 20 percent decline in real costs
23 between 2005 and 2015, unit costs still would have ~~risen by 60 percent~~ dropped to \$0.

25 18. The example above is useful for demonstrating the flaws in the Mid-Size ILECs'
26 example, but the more important point that needs to be made is that neither the example as
27 originally presented nor the redlined version of it above are on-point relative to a discussion of

Nevada Department of Taxation, Division of Local Government Services, *Expected Life for Telecommunications and Cable Distribution Assets: Literature Review Summary and Recommendations* (Apr. 2, 2015)

<http://tax.nv.gov/uploadedFiles/taxnvgov/Content/Meetings/Expected%20Life%20Study-Telecommunications%20and%20Cable%20Assets.pdf> at 6.

²⁵ Mid-Size ILECs' Comments at 74-75.

1 productivity analyses or the need to reset prices. The “unit cost” of providing a single service at
2 a single location is not relevant to those analyses. Both of those concepts apply to the overall
3 operations of the Mid-Size ILECs (and other ILECs) and as such the shifting demand patterns
4 described at pp 74-75 would be encompassed in the measures of productivity and the analysis of
5 the need for a one-time reset of prices flowing out of those productivity studies.²⁶

6 19. As to the need to reset prices, even assuming the single building, declining demand
7 example has some merit, the question is not what has happened to the historic costs of providing
8 service to that building, but rather what is the relationship between costs and *prices* – are
9 customers being charged *prices* that are too high and do those *prices* need to be lowered. If the
10 per customer “cost” was (per Mid-Size ILECs)²⁷ 1 Gold Doubloon or even 1.6 Gold Doubloons,
11 the only information that would be relevant at all to a discussion of whether price levels need to
12 be reset is the relationship between the between that cost and price. No actual data, or even
13 illustrative examples, of that relationship have been provided by the Mid-Size ILECs.

14 20. Even more out of place than the example itself is the somewhat bizarre discussion of
15 the “revenue requirement” per customer accompanying the Mid-Size ILECs example (found in
16 the example itself and, in explanatory footnote 266, expressed in Gold Doubloons). The
17 solutions the FCC’s is contemplating are for carriers (like the Mid-Size ILECs) subject to its

²⁶ This in part explains why the X-factor being supported by Ad Hoc for use as an interim adjustment – 4.4 – is so much lower than the 11.01 X-factor it advocated in 2005. See, Reply Declaration of Susan M. Gately, attached to the Reply Comments of Ad Hoc Telecommunications Users Committee on the NPRM, WC Docket No. 05-25 (filed July 29, 2005), Appendix 1a, Table 1 (column C) and Table 2 (column I). The price cap LECs at the time were Bellsouth, Qwest, SBC, and Verizon.

²⁷ Mid-Size ILECs comments at 74.

1 Price Caps form of regulation. ILECs, including members of the Mid-Size ILEC commenters,
2 have vociferously argued for years that price caps “severs” the relationship between revenue
3 requirement and prices. Its sudden reappearance here as an attempt to ward off adoption of a
4 new productivity factor should be ignored.

5 **IV. AT&T is wrong that there should be no expectation of going-forward**
6 **productivity for TDM BDS.**

7 21. AT&T echoes the comments of Mid-Size ILECs discussed above, “Demand for DSn
8 services is rapidly declining and carriers are in the process of retiring their legacy TDM facilities.
9 Thus, there can be no reasonable expectation that price cap LECs will be able to achieve
10 meaningful productivity gains in providing these services in the future.”²⁸ For the same reasons
11 discussed above relative to the full depreciation of much of the plant over which TDM BDS is
12 provided AT&T is wrong.²⁹

13 **V. Resetting (lowering) prices for TDM BDS will not give customers an “artificial**
14 **incentive” to use those services as AT&T claims.**

15 22. In either a disingenuous or completely misinformed statement, AT&T’s attorneys’
16 claim “To the contrary, an increased X-Factor (and a one-time adjustment to these rates)
17 intended to drive down the rates for legacy TDM services would dramatically slow the IP

²⁸ AT&T Comments at 7.

²⁹ It is impossible to perform an analysis for AT&T similar to that done with Qwest Corporation data above because AT&T’s 10K does not report ILEC operations separately and the Commission has discontinued the requirement for AT&T and the other price caps LECs to file even the most basic financial reports.

1 transition by giving customers an artificial incentive to remain on these legacy networks, which
2 in turn will reduce incentives to invest in new broadband networks.”³⁰

3 23. Rather, those very customers have been being given improper price signals for at
4 least the past decade, giving them an “artificial incentive” to migrate away from perfectly
5 functioning, perfectly functional TDM services. Lowering prices to levels that approach what
6 would be expected in a competitive market may well incent customers to stay on TDM networks
7 – but there would be nothing “artificial” about that incentive.

8 24. AT&T’s persistent claims about the impact that lower prices for TDM BDS would
9 have on its “incentives to invest in new broadband networks” is unsupported by any facts and
10 should be given no weight. AT&T has deployed broadband where it has deemed it will be
11 profitable and has withheld it elsewhere (absent government incentives).³¹ That is perfectly
12 rationale behavior for a profit-maximizing, publicly-held firm. Allowing it to continue to squeeze
13 monopoly profits from TDM BDS will not change the equation as to where broadband
14 deployment is or is not profitable. The slow-roll out of broadband in parts of AT&T’s operating
15 footprint has never been about a lack of cash-flow or an inability to raise sufficient funds for such
16 investments.

³⁰ AT&T Comments at 7.

³¹ AT&T has accepted more than \$500-million per year in CAF Phase I and Phase II funds to deploy broadband (wireline and wireless) to unserved areas. *AT&T Accepts Nearly \$428 Million in Annual Support from Connect America Fund to Expand and Support Broadband for Over 2.2 Million Rural Consumers in 18 States*, FCC News Release, August 27, 2015, DOC-335080A1 (Phase II) and Hank Hultquist, *AT&T to Deploy Broadband Under FCC’s Connect America Fund Program*, AT&T Policy Blog (Aug. 20, 2013), <http://www.attpublicpolicy.com/universal-service/att-to-deploy-broadband-under-fccs-connect-america-fund-program/> (Phase I).

25. The Commission should run away from AT&T's suggestion that it be allowed to purposefully engage in prohibited *implicit* subsidization of broadband services from funds garnered by price-gouging TDM BDS subscribers. Those subscribers are already heavily contributing to AT&T's broadband deployment through the *explicit* 17.9% USF surcharge appended to their monthly bills.³²

VI. Mid-Size ILECs observations of the need to lower prices in response to competitive conditions for certain high-bandwidth Ethernet is prima facie evidence of overpricing *absent competition* and cannot be used to justify continued overpricing of TDM BDS and lower-speed Ethernet services.

26. The Declaration of the Mid-Size ILECs' Craig Davis (Vice President for Sales and Account Management in CenturyLink's Wholesale Markets Group)³³ is little more than a thinly veiled whine about CenturyLink's inability to continue to charge unregulated, monopoly-level prices for a segment of their BDS demand because competitors have entered that segment of the market (Ethernet services at speeds of at least 100-mbps and above sold as connections to wireless towers). The competitive conditions they describe are not relevant to nor reflective of the conditions extant either for Business Data Services provided at speeds of 100 mbps or below – be they TDM or Ethernet, or to services sold at non-tower locations. Nor can the statements be

³² More than 5% of the total USF funding disbursements for 2016 will go to AT&T specifically for the purpose of “incenting” it to deploy broadband to unserved areas through its CAF Phase 1 and Phase 2 receipts (\$500-m ÷ approx. \$9-b). AT&T's \$500-million draw uses more than 10% of the overall High Cost portion of USF (\$500-m ÷ \$4.5-b).

³³ Mid-Size ILECs' Comments, Attachment A (“Davis Declaration”).

1 taken as indication that reductions in prices for non-competitive services should not be
2 implemented – in fact just the opposite is true.

3 27. To the extent that CenturyLink and other members of the Mid-Size ILECs are *unable*
4 to offer fiber connections to mobile towers at speeds of 100 mbps and above at the same price
5 levels as their (usually smaller) competitors (either because Mid-Size ILECs are less efficient in
6 provisioning those services or because they chooses to provide shareholders with higher returns
7 than can be garnered from that line of business), then the obvious solution is to stay out of the
8 segment of the market that is causing the problem – don't respond to those RFPs – but there is no
9 indication from Mr. Davis that CenturyLink is pursuing that avenue. Indeed the quotes from the
10 Qwest Corp. 10-K (owned by CenturyLink) detailed above reveal that vast majority of capital
11 investments over the last four years have been directed almost entirely at this very market.³⁴
12 Close review of the Declaration reveals that the problem is not so much that the costs of
13 providing the services are too high, but that the *prices* for the services have been set too high in
14 excess of those costs in the first place (something that a competitive market does not allow a
15 provider to maintain over the long term).

16 28. Indeed Mr. Davis' Declaration details the repeated price reductions that CenturyLink
17 has had to make to adjust to a competitive marketplace. His declaration and recitations of
18 necessary price reductions over the past five years³⁵ offers prima facie evidence that
19 CenturyLink's 'pre-competition' prices were set far in excess of the levels that are demanded in
20 a competitive marketplace. It should be noted that although CenturyLink reports being required

³⁴ See n. 23 supra.

³⁵ Davis Declaration at 2, para. 6 and 5, para. 16.

1 to repeatedly lower prices for existing customers for existing services there is no claim that
2 prices have been lowered to a level that makes them unprofitable to provide.

3 29. Davis's Declaration provides ample evidence of the need for a price adjustment for
4 all those BDS services and locations where competition is not available to force down the prices
5 in the same manner as described by Mr. Davis. In fact, a plain reading of the Mid-Size ILECs'
6 comments and Mr. Davis' Declaration seems to reveal that too-high prices for TDM services
7 may be driving a lot of the demand shift toward higher bandwidth facilities.³⁶ Were TDM BDS
8 prices lower, the incentive to shift demand to higher bandwidth Ethernet Services would be
9 reduced. If the prices for TDM BDS and low-speed Ethernet are reduced in keeping with Ad
10 Hoc's recommendation one would expect *stimulation* of demand for those services.³⁷

11 30. Finally, the Declaration of Mr. Davis and the accompanying Declaration of
12 CenturyLink's Director of Product Management in the Wholesale Market Group, David
13 Williams,³⁸ both focus almost exclusively on BDS services sold to wireless carriers, as if
14 purchases by wireless carriers represent the vast majority of BDS purchases. That is not the
15 case. Services sold to wireless carriers represent only a portion of the market. Data filed with
16 the Commission in response to the Data Request reveal that wireless carrier purchases

³⁶ Per the Mid-Size ILECs, "Most of the customers who disconnect DSn services are migrating to Ethernet or other packet-based services, which provide higher throughput and ***better per-megabyte pricing than comparable DS1 or DS3 services...***" Mid-Size ILECs' Comments at 18 (emphasis added).

³⁷ There is certainly no evidence in the record that this market is not subject to the normal laws of supply and demand.

³⁸ Mid-Size ILECs' Comments, Attachment B.

represented well something less than 20% (\$5.6-billion) of all BDS purchases and an even smaller percentage of TDM BDS purchases (\$2.6-billion).³⁹

VII. The FCC should implement an immediate interim reduction in baseline BDS prices of 25.2% and adopt an interim X-factor of 4.4% pending final resolution of any outstanding disputes raised by this record.

31. For the reasons discussed above, the 25.2% reduction in baseline BDS prices calculated by Drs. Sappington and Zarakas using the EU KLEMS data set and proposed by Sprint should be implemented immediately. At the same time the FCC should adopt 4.4 as a temporary X-factor pending final resolution of the inevitable disputes that will arise relative to adoption of the permanent components of this overall reformation of the Commission's rules surrounding Business Data Services.

Verification



The foregoing statements are true and correct to the best of my knowledge, information and belief.

³⁹ Aggregation of data from all respondents filed in response to request DR II.E.3 in conjunction with *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 02-25, RM-10593, Order on Reconsideration, 29 FCC Rcd 10899 (2014).

APPENDIX A

Table 1
Selected Depreciation and Investment Metrics: 2010 to 2015
Qwest Corporation ILEC Operations
\$s in Millions

		2010	2011	2012	2013	2014	2015	Change 2010 to 2015	
EXPENSES									
Depreciation	\$	1,652	\$ 1,307	\$ 1,175	\$ 1,099	\$ 1,048	\$ 986	-40%	
Total Operating Expense (OPEX)	\$	6,788	\$ 7,066	\$ 6,943	\$ 6,675	\$ 6,726	\$ 6,704	-1%	
Depreciation as % of OPEX		24%	18%	17%	16%	16%	15%		
		2012		2013		2014		2015	
ANNUAL CAPITAL EXPENDITURES									
Capital Expenditures in PPE	\$	1,266	\$ 1,264	\$ 1,165	\$ 1,247				
						Cumulative CAPEX 2012 - 2015			
						\$ 4,942			
		2011	2012	2013	2014	2015		Change 2011 to 2015	
SELECTED BALANCE SHEET ITEMS									
Gross PPE	\$	8,420	\$ 9,242	\$ 10,193	\$ 11,157	\$ 12,182	\$ 3,762		
Accumulated Depreciation	\$	914	\$ 2,011	\$ 2,985	\$ 3,956	\$ 4,808			
Net PPE	\$	7,506	\$ 7,231	\$ 7,208	\$ 7,201	\$ 7,374			

PPE = Property, Plant and Equipment

Source: Qwest Corporation 10 Ks for the years ending 12/31/2010, 12/31/2011, 12/31/2012, 12/31/2013, 12/31/2014 and 12/31/2015.

Accessed at ir.centurylink.com

ATTACHMENT 1

Susan M. Gately

Curriculum Vitae

Susan M. Gately founded SMGately Consulting, LLC (SMGC) in January of 2011. Susan is an economic and policy expert specializing in the telecom arena with more than thirty years of consulting experience. Her specific experience lies in the areas of

- Telecom industry structure;
- Regulatory regimes;
- Cost development;
- Access charges;
- Pricing and rate structure; and
- Telecom services and network management practices.

Prior to founding SMGC Susan was a partner in and the Senior Vice President at Economics and Technology, Inc. (ETI) providing advising, litigation support, expert testimony, white papers, and in-house training and education to ETI's myriad carrier, governmental agency and large business clients. Susan has provided expert testimony on a variety of telecom policy matters and participated in hundreds of FCC proceeding on access charges, universal service, separations and cost accounting, and form of regulation.

Susan has been involved in the analysis of incumbent LEC intrastate and interstate access tariffs since the inception of the tariffs in 1984. She has participated in virtually every major FCC proceeding on access charges and price caps, and is among the nation's leading experts on access charge rate structure, methodology, and policy. Access issues addressed in the hundreds of submissions made to the FCC include access service pricing and rate structures, price caps implementation, access service costs (including cost allocation of regulated and non-regulated services), and alternative forms of regulation. Susan undertook detailed analysis of the data filed in response to the FCC's first "voluntary data request" in its special access proceeding Docket 05-25 throughout 2012.

More recently, she engaged in comprehensive analysis of issues related to terminating access monopolies in the context of the FCC's proceedings on "Protecting and Promoting the Open Internet" ultimately preparing a detailed rebuttal, [*Declaration in Rebuttal of Lerner / Ordoover Declaration*](#) filed in that docket to a Declaration prepared by Andres Lerner and Janusz Ordoovers.

Throughout 2011 Ms. Gately was an active participant in the FCC's USF / ICC proceeding on behalf of the AdHoc Telecommunications Users Committee preparing and submitting two separate declarations and visiting the FCC on multiple occasions to discuss the results of her analyses. In particular, Ms. Gately devoted significant effort in the analysis of RLEC cost data filed as part of that proceeding and quantification of the financial impact upon RLECs of the potential combination of reduced USF payments and reduced access charge revenues.

For the last several years Ms. Gately has also been particularly active in the analysis of special access pricing, cost, and separations data. In 2010 she authored a paper entitled [*Longstanding Regulatory Tools Confirm BOC Market Power: A Defense of ARMIS*](#). The paper detailed the workings of and interactions between Parts 36 and 69 of the FCC's rules (the results of which are codified in ARMIS for the largest of the ILECs). Susan has been involved in the analysis of incumbent LEC intrastate and interstate access tariffs since the filing of the initial access tariffs in 1983. Ms. Gately has participated in the preparation of hundreds of submissions to the FCC on issues including access service pricing and rate structures, price caps implementation, access service costs (including cost allocation of regulated and non-regulated services), and alternative forms of regulation.

Ms. Gately has also devoted significant time over the last several years to researching and analyzing conditions extant in the wireline and wireless telecommunications markets in the US, the conditions that have led to the current market structures and the implications for users of those networks. In addition to the *ARMIS* paper identified above Ms. Gately's research and analysis in this area were codified in the following papers released in 2010. [*Regulation, Investment and Jobs: How Regulation of Wholesale Markets Can Stimulate Private Sector Broadband Investment and Create Jobs*](#) (With Helen E. Golding, Lee L. Selwyn and Colin B. Weir. Released in February, 2010.) [*Revisiting US Broadband Policy: How Reregulation of Wholesale Services Will Encourage Investment and Stimulate Competition and Innovation in Enterprise Broadband Markets*](#) (With Helen E. Golding, Lee L. Selwyn and Colin B. Weir. Released in February, 2010.)

Ms. Gately's most recent analysis of small independent company universal service issues in relation to the FCC's 2011 USF / ICC proceeding built upon her extensive past analysis of similar issues (as they relate to both state and interstate universal service funds). Beginning in 2003 and following on for the next several years she researched and documented systemic incentives to inefficiencies inherent in the FCC's USF funding mechanism. The primary documentation of that early work was a paper entitled *Lost in Translation: How Rate of Return Regulation Transformed the Universal Service Fund for Consumers into Corporate Welfare for the RLECs*, (with Scott C. Lundquist) prepared on behalf of Western Wireless, February 2004.

That work was followed later that same year with *Striking a Nerve: ETI's Rejoinder to the NTCA/OPASTCO False Premises Report*, (with Lee L. Selwyn and Scott C. Lundquist) also prepared on behalf of Western Wireless, October 2004. Ms. Gately has prepared presentations on this issue for use at en banc panels of the Federal State Board on Universal Service and presented a session at NASUCA's 2005 annual conference as well.

Among other issues addressed at the FCC has been the appropriate rate structure for the collection of universal service costs from end users, and rules related to the level of universal service funding that should be available to rural telecommunications service providers. Ms. Gately was also actively involved in the investigation of the level of cost to be recovered from the implementation of local number portability (LNP) and the appropriate method of recovering those costs. Ms. Gately was also involved in modeling and analysis of the FCC's last major revision to its access charge and price caps plan — the so called "CALLS" plan.

Ms. Gately has also been extensively involved in the analysis of cost and operational data submitted by telephone companies in the context of regulatory proceedings and audits, including the submission of expert testimony in state public utility proceedings. Her responsibilities have involved the analysis of telephone company cost data and cost study methodologies. Ms. Gately's work has included the development of alternative cost figures for the purpose of presenting alternative rate proposals. She has participated in the preparation of expert testimony on local calling area expansion, affiliate transactions, survey and statistical methodologies, cost study methodologies, revenue requirement, infrastructure and modernization, new service pricing, access pricing, unbundled network element pricing, avoided retail costs for use in setting wholesale prices and other issues related to the opening and operation of markets.

Throughout 1994, acting as a staff expert for the Delaware PSC Staff, Ms. Gately participated actively in the litigation of rules implementing an alternative regulatory plan put in place by the Delaware state legislature. Ms. Gately was one of the designated staff negotiators during an attempted negotiated settlement of the rules using Alternate Dispute Resolution (ADR) techniques. Subjects addressed by the PSC's Rulemaking included, among other things, the development of both incremental and fully distributed costing methodologies to be used by Bell Atlantic for use as incremental cost floors, and to ensure against cross-subsidization. She co-authored comments on behalf of staff regarding cost methodology, rate imputation, and unbundling requirements.

Ms. Gately was particularly active in the examination of ILEC cost data and deployment plans for basic rate interface (BRI) ISDN service. Ms. Gately was involved in all facets of a New

England Telephone BRI ISDN investigation that culminated in an affordable, widely deployed ISDN offering in Massachusetts. She has also prepared and/or sponsored testimony and comments relative to the deployment and pricing of ISDN services in Colorado, Tennessee, Texas, Ohio, and Connecticut. Ms. Gately also co-authored two separate ISDN position papers in conjunction with Dr. Lee L. Selwyn; *A Migration Plan for Residential ISDN* for the Electronic Frontier Foundation and *The Prodigy ISDN White Paper: ISDN Has Come of Age* for Prodigy Services Company.

Ms. Gately was also heavily involved in the development of avoided cost estimates for use in setting wholesale prices in a resale environment. Ms. Gately co-authored (with Dr. Lee L. Selwyn) *Commercially Feasible Resale of Local Telecommunications Services: An Essential Step in the Transition to Effective Local Competition*. She has participated in resale proceedings and or interconnection arbitrations (relative to wholesale pricing) in California, Hawaii, Illinois, Ohio, Puerto Rico, Nevada, and Louisiana.

Ms. Gately was also involved in the analysis of issues related to the application of several of the Bell Companies for Section 271 authority to enter the interLATA long distance market. Ms. Gately has also undertaken a detailed analysis of the Continuing Property Record (CPR) audits conducted by the Accounting and Audits Division of the FCC. That analysis culminated in the preparation of a paper (written in conjunction with Dr. Lee L. Selwyn) *Inflated BOC Prices: An Agenda for State PUC Actions Arising from the FCC CPR Audits*.

Ms. Gately has assisted numerous Fortune 100 companies in the evaluation of pricing, terms and conditions as part of the long distance and local procurement process.

In addition to her regulatory work, Ms. Gately has been a frequent speaker at various industry gatherings including large conventions and more specialized seminars and conferences. The subject matters have included the following wide range of issues:

- Negotiation of custom network contracts;
- ILEC central office collocation;
- The FCC's price cap plan for ILECs;
- Principles for pricing ISDN basic rate service.
- USF Funding for wireless CETCs
- Reformation of the USF High Cost Fund

Prior to joining ETI, Ms. Gately was employed as an Economic Analyst at Systems Architects, Inc. Her work there primarily involved the analysis of economic data and survey results for the Health Care Finance Administration, the Social Security Administration, and the Department of Defense.

Susan has a Bachelor of Arts degree in Economics from Smith College (1980).

Appearances in Regulatory Proceedings

Telecommunications Regulatory Board of Puerto Rico, *Telefónica Larga Distancia de Puerto Rico, Inc., Petition for arbitration pursuant to Section 47 U.S.C. 252 (b) of the Federal Communications Act and Section 5 (b), Chapter III, of the Puerto Rico Telecommunications Act, regarding interconnection rates, terms and conditions with Puerto Rico Telephone Company, Inc.*, Docket No. JRT-2006-AR-0001, on behalf of Telefónica Larga Distancia de Puerto Rico, Inc., Direct Testimony filed January 16, 2007, Reply Testimony filed February 7, 2007, cross-examination February 14, 2007, Declaration filed March 30, 2007.

United States District Court, District of New Jersey, in *Re: AT&T Corp. v. JM Telecom, LLC*, Civil Action No. 99-2578, on behalf of AT&T Corp., Expert Report filed December 5, 2003.

California Public Utilities Commission, in *Re: Order Instituting Rulemaking to Review Policies Concerning Intrastate Carrier Access Charges*, Docket No. R.03-08-018, on behalf of AT&T Communications of California, Inc. Declaration filed November 12, 2003.

Colorado Public Utilities Commission, in *Re: Application of US West Communications, Inc. for Investigation into Switched Access Rates*, Docket No. 00A-201T, on behalf of AT&T Communications of the Mountain States, Inc., Testimony of Lee L. Selwyn, filed July 18, 2000, adopted by Susan M. Gately, cross-examined on October 17, 18, 2000.

Arizona Corporation Commission, in *Re: In the Matter of the Application of US West Communications, Inc., a Colorado Corporation, for a Hearing to Determine the Earnings of the Company, the Fair Value of the Company for Ratemaking Purposes, to Fix a Just and Reasonable Rate of Return Thereon and to Approve Rate Schedules Designed to Develop Such Return*, Docket No. T-1051B-99-105, on behalf of AT&T Communications of the Mountain States, Direct Testimony filed August 9, 2000, Supplemental Direct Testimony filed November 13, 2000.

United States District Court, District of Massachusetts, in *Re: Telephone Management Corporation, Plaintiff, v. State Street Bank and Trust Company, Defendant*, Civil Action No. 97-10993 PBS, on behalf of State Street Bank and Trust Company, Expert Report filed July 17, 1998.

Delaware Public Service Commission, in *Re: In the Matter of Development of Regulations for the Implementation of Telecommunications Technology Investment Act*, Docket No. PSC Reg. 41, on behalf of Delaware Public Service Commission Staff, cross-examination March 2, 1995.

New York Public Service Commission, in *Re: Proceeding on Motion of the Commission to Investigate Performance-Based Incentive Regulatory Plans for New York Telephone Company*, Docket No. 92-C-0665, on behalf of Cable Television Association of New York, Supplemental Testimony filed September 8, 1994.

California State Legislature, in *Re: California Long Distance Telecommunications Consumer Choice Act*, Assembly Bill 3720, on behalf of AT&T, Statement before the California State Legislature, April 11, 1994.

Tennessee Public Service Commission, in *Re: In the Matter of the Commission's Investigation of Integrated Services Digital Network (ISDN)*, on behalf of Prodigy Services Company, oral testimony, November 11, 1992.

Arizona Corporation Commission, in *Re: In the Matter of the Commission's Examination of the Rates and Charges of the Mountain States Telephone and Telegraph Company*, Docket No. E-1051-88-306, on behalf of Residential Utility Consumer Office, Direct Testimony filed July 13, 1990, Rebuttal Testimony August 7, 1990.

Papers and Reports

[Declaration in Rebuttal of Lerner / Ordovery Declaration](#). Prepared on behalf of the AdHoc Telecommunications Committee and filed on Feb 19, 2015 in FCC Docket GN 14-58, *Protecting and Promoting the Open Internet*.

[The Benefits of a Competitive Business Broadband Market](#) (With Helen E. Golding) prepared on behalf of the Competitive Broadband Coalition, March 2013.

Regulation, Investment and Jobs: How Regulation of Wholesale Markets Can Stimulate Private Sector Broadband Investment and Create Jobs (With Helen E. Golding, Lee L. Selwyn and Colin B. Weir. Released in February, 2010.)

Revisiting US Broadband Policy: How Reregulation of Wholesale Services Will Encourage Investment and Stimulate Competition and Innovation in Enterprise Broadband Markets- (With Helen E. Golding, Lee L. Selwyn and Colin B. Weir. Released in February, 2010.)

Longstanding Regulatory Tools Confirm BOC Market Power: A Defense of ARMIS (With Helen E. Golding, Lee L. Selwyn and Colin B. Weir. Released in January, 2010.)

The Role of Regulation in a Competitive Telecom Environment: How Smart Regulation of Essential Wholesale Facilities Stimulates Investment and Promotes Competition (With Helen E. Golding, Lee L. Selwyn, and Colin B. Weir. Released in March, 2009.)

Special Access Overpricing and the US Economy: How Unchecked RBOC Market Power is Costing US Jobs and Impairing US Competitiveness (with Helen E. Golding, Lee L. Selwyn, and Colin B. Weir), prepared on behalf of the AdHoc Telecommunications Users Committee, August 2007.

HOLD THE PHONE: Debunking the Myth of Intermodal Alternatives for Business Telecom Users in New York, prepared on behalf of the UNE-L CLEC Coalition in New York, August 2005.

The 2005 Update of the 1999 TFP Model Calculating a Productivity Factor for Interstate Special Access, prepared on behalf of the Ad Hoc Telecommunications Users Committee, submitted as an attachment to Susan M. Gately's Reply Declaration, filed in FCC WC Docket No. 05-25, *Special Access Rates for Price Cap Local Exchange Carriers*, July 29, 2005.

Striking a Nerve: ETI's Rejoinder to the NTCA/OPASTCO False Premises Report, (with Lee L. Selwyn and Scott C. Lundquist) prepared on behalf of Western Wireless, October 2004.

Competition in Access Markets: Reality or Illusion, A Proposal for Regulating Uncertain Markets, (with Lee L. Selwyn and Helen E. Golding), prepared on behalf of the Ad Hoc Telecommunications Users Committee, August 2004.

Lost in Translation: How Rate of Return Regulation Transformed the Universal Service Fund for Consumers into Corporate Welfare for the RLECs, (with Scott C. Lundquist) prepared on behalf of Western Wireless, February 2004.

Business Telecom Users Benefit from UNE-P Based Competition, (with Lee L. Selwyn) prepared on behalf of AT&T, January 2003.

Inflated BOC Prices: An Agenda for State PUC Action Arising from the FCC CPR Audits, (with Lee L. Selwyn) prepared on behalf of AT&T, July 2000.

The "Connecticut Experience" with Telecommunications Competition: A Case Study in Getting it Wrong, (with Lee L. Selwyn and Helen E. Golding) prepared on behalf of AT&T, February 1998.

Commercially Feasible Resale of Local Telecommunications Services: An Essential Step in the Transition to Effective Local Competition, (with Lee L. Selwyn) prepared on behalf of AT&T, July 1995.

The Enduring Local Bottleneck: Monopoly Power and the Local Exchange Carriers, prepared by Economics and Technology, Inc. (with Lee L. Selwyn) and Hatfield Associates, Inc., on behalf of AT&T, MCI Communications Corporation, Competitive Telecommunications Association, February 1994.

LEC Price Cap Regulation: Fixing the Problems and Fulfilling the Promise, (with Lee L. Selwyn, David J. Roddy, Sonia N. Jorge and Scott C. Lundquist), prepared on behalf of the Ad Hoc Telecommunications Users Committee, May 1994.

Access and Competition: the Vital Link, (with Lee L. Selwyn), prepared on behalf of the Ad Hoc Telecommunications Users Committee, April 1994.

Pricing and Policy Issues Affecting Local/Access Service in the U.S. Telecommunications Industry, (with Lee L. Selwyn, W. Page Montgomery, and Jenny H. Yan), prepared on behalf of the Canadian Radio-Television and Telecommunications Commission, December

1992.

ISDN Has Come of Age, (with Lee L. Selwyn), prepared on behalf of Prodigy Services Company, November 1992.

A Roadmap to the Information Age: Defining a Rational Telecommunications Plan for Connecticut, (with Lee L. Selwyn, Susan M. Baldwin, JoAnn S. Hanson, David N. Townsend and Scott C. Lundquist), prepared on behalf of the Connecticut Office of Consumer Counsel, October 30, 1992.

Migration Plan for Residential ISDN Deployment, (with Lee L. Selwyn) prepared on behalf of the Communications Policy Forum, Electronic Frontier Foundation, and April 20, 1992.

Efficient Pricing for ONA Access : Recommendations for Modifications to Part 69 of the FCC's Rules to Accommodate an Open Network Architecture, (with Lee L. Selwyn, JoAnn S. Hanson, and David N. Townsend), prepared on behalf of the Coalition of Open Network Architecture Parties, The ONA Users Group, and Ad Hoc Telecommunications Users Committee, August 10, 1989.

Use of Featured Group Carrier Switched Access Services for National Paging Access: An Examination of Potential Feasibility, (with Lee L. Selwyn) prepared on behalf of National Satellite Paging, Inc., March 15, 1989.